IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4717 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VASANT TALKIES

Versus

STATE OF GUJARAT

Appearance:

MR DR BHATT for Petitioner

MS MANISHA LUVKUMAR for the respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 12/06/2000

ORAL JUDGEMENT

1. Rule. As Ms. Manisha Luvkumar has already put appearance for respondents, the matter is complete. Looking to the nature of the case and keeping in view the fact that the reply has also been filed to the petition

by the respondents, the matter is taken up for final hearing today.

2. Heard the learned counsel for the parties. The petitioner, a partnership firm, runs a Cinema, by this petition under Article-226 and 227 of the Constitution of India prays to quash and set aside the order at Annexure-A of respondent no.1 dated 25th of May, 1998 under which a penalty of Rs.39748/- was imposed upon the petitioner for evasion of entertainment tax. It is the case of the petitioner that since 1941, the firm is running a cinema. The petitioner was served with a Show Cause Notice dated 7/2/1997 and therein, allegations were made that the petitioner is charging Rs.10/- for Upper Class (Ist Class) for the ticket of Rs.7/- and thus, there is evasion of entertainment tax. After receipt of this notice, the petitioner demanded copy of the statements recorded of the Manager by depositing the requisite fees thereof, but the copy of these statements were not supplied.

3. The petitioner filed a reply to the show cause notice and raised therein manifold contentions. One of the contentions raised is that it is not possible to record the statements of 216 spectators when the cinema is going on. The respondent no.2 under its order dated 19th May, 1997, taking it to be a case of evasion of entertainment tax, imposed penalty of Rs.3,027/- upon the petitioner. This order was accepted by the petitioner and the penalty, as imposed, was deposited. After about six months, this order of respondent no.2 was taken in suo motu revision by respondent no.1. The petitioner appeared before respondent no.1 on the date fixed i.e. 23rd January, 1998. It is a grievance of the petitioner that on that day, Shri P.D. Vaghela, who was working on the post of Dy. Secretary to the Government, had to leave the office for his official work. The petitioner was intimated that he will be informed the next date of the hearing. The petitioner submits that without fixing the next date of the hearing, the respondent no.1 passed order dated 25th May, 1998 under which a penalty of Rs.39748/- has been imposed. The petitioner, to show his bona fide in the matter, has brought a cheque of Rs.36700/- and his counsel contended that the petitoner may be afforded an opportunity of hearing in the matter.

4. The learned counsel for respondents vehemently contended that proper opportunity of hearing was given to the petitioner, but the same has not been availed of.

5. Be that as it may, it is a case where in case of

an opportunity of hearing is given to the petitioner in the matter, it will not cause any prejudice to the respondents. The amount of penalty which has been imposed upon the petitioner has been deposited by the petitioner and as such, it is just and reasonable and in the interest of justice that opportunity of hearing may be afforded to the petitioner. Very specifically this fact has been not denied by the respondent that on the date fixed for hearing of the matter by the respondent no.1, he has not heard the petitioner as he has to go to attend some other official work. Intimation has not been given for the next date. In presence of this fact, it is also just and reasonable and in consonance with the principles of natural justice that an opportunity of hearing may be afforded to the petitioner.

6. In the result, this Special Civil Application succeeds and the same is allowed. The order of the respondent no.1 dated 25th May, 1998 is quashed and set aside and the matter is remitted back to the respondent no.1 to decide the same after giving an opportunity of hearing to the petitioner. If ultimately, the petitioner fails before the respondent no.1, the respondents are free to apply to this court for withdrawal of the amount deposited by the petitioner in this court along with the accrued interest thereon. Where the petitioner succeeds before the respondent no.1 fully or partly, as the case may be, accordingly, to that extent, he shall be entitled for withdrawal of the amount from this court.

(S.K. Keshote, J.)

(kamlesh)